STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLENN LEONARD FISHER,

Defendant-Appellant.

UNPUBLISHED
October 19, 2006

No. 264764
Wayne Circuit Court
LC No. 05-001467-01

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, unlawfully driving away an automobile (UDAA), MCL 750.413, and receiving or concealing a stolen motor vehicle, MCL 750.535(7). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 35 to 70 years for the armed robbery conviction and two to five years for the UDAA and receiving or concealing convictions. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in denying his request for an instruction on larceny from the person, MCL 750.357, as a lesser offense to the armed robbery charge. We review jury instructions that involve questions of law de novo, but a trial court's determination that a jury instruction applies to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

An instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it. *People v Cornell*, 466 Mich 335, 357; 646 NW12d 127 (2002).

The larceny from the person statute, MCL 750.357, provides that "[a]ny person who shall commit the offense of larceny by stealing from the person of another shall be guilty of a felony . . . ." MCL 750.357. The crime embraces the taking of property in the possession and immediate presence of the victim, without the element of force. *People v Chamblis*, 395 Mich 408, 424-425; 236 NW2d 473 (1975), overruled on other grounds in *Cornell*, *supra* at 357-358.

Defendant argues that he was entitled to an instruction on the lesser offense of larceny from the person because there was disputed evidence whether he was armed with a knife. But this dispute is relevant only to whether the crime committed was an armed robbery or an unarmed robbery. The element that distinguishes a larceny from the crimes of armed or unarmed robbery is the use of force or violence. A robbery is committed when a person, in the course of committing a larceny, "uses force or violence against any person who is present, or who assaults or puts the person in fear[.]" MCL 750.529 (armed robbery); MCL 750.530 (unarmed robbery).

In this case, a rational view of the evidence did not support an inference that defendant participated only in a larceny, without force or violence to accomplish the taking. The victim's testimony, if believed, established that defendant hit the victim in the face, cut the victim with a knife, and participated with codefendant Guyton to bind the victim's legs and arms. Inkster Police Officer John Hankins testified that he observed the victim's injuries upon arriving at the victim's house. Conversely, defendant denied participating in a larceny of any kind. Neither the fact that the police did not find a knife, nor evidence that the police declined to take steps to place the knife that the victim later reported finding into evidence, provides a basis for inferring that the victim's property was taken without the use of force or violence.

Because a rational view of the evidence did not support an instruction on larceny from the person, the trial court did not err in failing to give the requested instruction.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens